

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY Z. BRYANT,

Plaintiff,

vs.

Case No. 09-CV-10318
HON. GEORGE CARAM STEEH

MICHAEL ASTRUE,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER ACCEPTING REPORT AND
RECOMMENDATION (#16); DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT (# 15); GRANTING IN PART PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT (# 10), AND REMANDING TO THE ALJ

This matter is before the court on the parties' cross-motions for summary judgment as to plaintiff Jeffrey Z. Bryant's claim for judicial review of defendant Commissioner of Social Security's denial of his August 12, 2005 application for disability insurance benefits, as well as his August 31, 2005 application for supplemental security income. The matter was referred to Magistrate Judge Mona Majzoub. On February 3, 2010, Magistrate Judge Majzoub issued a Report and Recommendation recommending that defendant's motion for summary judgment be denied, and that plaintiff's motion for summary judgment be granted to the extent this matter should be remanded to the Administrative Law Judge ("ALJ").

Specifically, Magistrate Judge Majzoub recommends remanding to the ALJ to assess plaintiff's credibility with regard to his complaints of fatigue. The ALJ's credibility determination regarding plaintiff's fatigue is not supported by substantial evidence, so it is not possible to determine whether the hypothetical question posed to the VE was accurate

and whether the ALJ's findings at step five are supported by substantial evidence. The ALJ must perform a new step four determination and, if necessary, step five determination and include those limitations he finds credible and supported by the record. Magistrate Majzoub thus finds that remand is warranted on the record as opposed to an immediate award of benefits. See Faucher v. Secretary of Health and Human Services, 17 F.3d 171, 176 (6th Cir. 1994) ("If a court determines that substantial evidence does not support the Secretary's decision, the court can reverse the decision and immediately award benefits only if all essential factual issues have been resolved and the record adequately establishes a plaintiff's entitlement to benefits"). No party has filed timely objections to the Report and Recommendation. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2).

Having reviewed the record and Report and Recommendation, and in the absence of timely objections, the court hereby ACCEPTS Magistrate Judge Majzoub's well reasoned Report and Recommendation as its own. Defendant's motion for summary judgment is hereby DENIED. Plaintiff's motion for summary judgment is hereby GRANTED to the extent this matter is hereby REMANDED to the ALJ for further proceedings as outlined in the Report and Recommendation.

SO ORDERED.

Dated: February 23, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
February 23, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk